

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF WYOMING

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4 JIMMIE G. BILES, JR., M.D.,  
 a resident of Wyoming,

5 Plaintiff,

6 vs.

7 Cheyenne, Wyoming  
 April 26, 2012  
 7:42 a.m.

8 JOHN HENRY SCHNEIDER, JR., M.D.,  
 MICHELLE RENE SCHNEIDER, husband  
 and wife, both residents of Montana;  
 9 JOHN HENRY SCHNEIDER, JR., M.D.,  
 P.C., a Montana corporation;  
 10 and JOHN DOES I-XXX,

CERTIFIED COPY

11 Defendants.

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12 JIMMIE G. BILES, JR., M.D.,

13 Plaintiff,

14 vs. Case No. 11-CV-294-F

15 LISA SHAURETTE FALLON,  
 a resident of Indiana,

16 Defendant.

17 JOHN H. SCHNEIDER and  
 18 MICHELLE SCHNEIDER,  
 Non-Party Movants.

19 -----

20 TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS

21 BEFORE THE HONORABLE NANCY D. FREUDENTHAL  
 CHIEF UNITED STATES DISTRICT JUDGE

22 Court Reporter: LISA D. ANTHONY, RPR, CRR  
 23 320 North Impala Drive  
 Fort Collins, CO 80521  
 24 (970)224-9363

25 Proceedings recorded by mechanical stenography,  
 transcript produced by computer.

## 1 APPEARANCES:

2 For the Plaintiff:

MR. R. DANIEL FLECK  
 MS. M. KRISTEEN HAND  
 Attorneys at Law  
 THE SPENCE LAW FIRM, LLC  
 15 South Jackson Street  
 P.O. Box 548  
 Jackson, Wyoming 83001

6

MR. WILLIAM L. SIMPSON  
 Attorney at Law  
 BURG SIMPSON ELDREDGE HERSH & JARDINE  
 P.O. Box 490  
 Cody, Wyoming 82414

9

MR. CHRISTOPHER C. VOIGT  
 Attorney at Law  
 CROWLEY FLECK  
 490 North 31st Street, Suite 500  
 P.O. Box 2529  
 Billings, Montana 59103

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11

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For Defendants  
 Schneider:

13

MR. BRADLEY D. BONNER  
 MR. LAURENCE W. STINSON  
 Attorneys at Law  
 BONNER STINSON, P.C.  
 1421 Rumsey Avenue  
 Cody, Wyoming 82414

14

15

For Defendant  
 Fallon:

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MR. P. CRAIG SILVA  
 Attorney at Law  
 WILLIAMS PORTER DAY & NEVILLE  
 159 North Wolcott, Suite 400  
 P.O. Box 10700  
 Casper, Wyoming 82602

19

(All counsel appeared by telephone)

20

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1 (Proceedings commenced at 7:42 a.m.,  
2 April 26, 2012.)

3 THE COURT: Good morning. This is Nancy  
4 Freudenthal. Could I get a roll call from the phone?

5 MR. BONNER: In Cody, this is Brad Bonner and  
6 Laurence Stinson for the Schneiders.

7 MR. SILVA: In Casper, this is Craig Silva on  
8 behalf of Lisa Fallon.

9 MR. VOIGT: Chris Voigt in Billings on behalf of  
10 Dr. Biles.

11 MR. SIMPSON: Bill Simpson here in Cody on behalf  
12 of Biles.

13 MR. FLECK: Dan Fleck in Jackson for Biles.  
14 Kristeen Hand is also on the phone. She's out in Berkeley,  
15 California.

16 THE COURT: All right. Who would like to proceed?

17 MR. BONNER: I will, Judge. This is Brad Bonner.

18 THE COURT: Let me just say just for the record,  
19 we're here discussing -- the case is Biles versus Fallon and  
20 Biles versus Schneider, Docket 11-CV-294 and 366.

21 Go ahead, Mr. Bonner.

22 MR. BONNER: Thank you, Your Honor.

23 You know, from the letter which we sent to you  
24 yesterday, the purpose of our call today is for us to make a  
25 disclosure to this tribunal. We have determined this

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1 disclosure is necessary pursuant to Rule 3.3(b), Rule  
2 3.3(c), and the corresponding Comment 12 of the Wyoming  
3 Rules of Professional Conduct for attorneys of law. I will  
4 talk about the specifics of those rules in a moment.

5           The disclosure today, Your Honor, concerns conduct  
6 of our client, defendant John Schneider, which we learned of  
7 for the first time on Monday of this week. That was April  
8 23. This is an extraordinary and difficult circumstance.  
9 In my 20 years of practicing law, this is not only the first  
10 time I've ever had to make such a disclosure, but it's the  
11 first time I've ever witnessed a disclosure to a tribunal  
12 under rules such as these.

13           I never liked tattletaling, and that's sort of what  
14 this feels like. Our reading of the rules tells us that it  
15 is our duty to do this. We reached this conclusion of our  
16 own accord after extensive consultation with bar counsel  
17 Mark Gifford.

18           Let me first identify the pertinent provision of  
19 the Rules of Professional Conduct at issue. Rule 3.3,  
20 Judge, is titled "Candor Toward the Tribunal." The specific  
21 provision we're focused on is Rule 3.3(b). And the  
22 pertinent provisions of that rule state:

23           "A lawyer who represents a client in an adjudicated  
24 proceeding and who knows that a person has engaged in  
25 criminal or fraudulent conduct related to the proceeding

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1 shall take remedial measures, including, if necessary,  
2 disclosure to a tribunal."

3 Rule 3.3(c) then provides the duties stated in  
4 paragraph (b), the one I just read, apply even if compliance  
5 requires disclosure of information protected by Rule 1.6.  
6 And that rule is the duty of client confidentiality.

7 Comment 12 then provides further guidance about  
8 these rules. It is entitled "Preserving Integrity of the  
9 Adjudicative Process." The pertinent provisions of that  
10 comment state as follows: "Lawyers have a special  
11 obligation to protect a tribunal against criminal or  
12 fraudulent conduct that undermines the integrity of the  
13 adjudicative process, such as bribing, intimidating or  
14 otherwise unlawfully communicating with a witness."

15 The comment goes on to state, Judge, "Thus,  
16 paragraph (b)," and it's referring to Rule 3.3(b), "requires  
17 a lawyer to take reasonable remedial measures, including  
18 disclosure, if necessary, whenever the lawyer knows that a  
19 person, including the lawyer's client, has engaged in  
20 criminal or fraudulent conduct related to the proceeding."

21 It is the comment's description of criminal or  
22 fraudulent conduct to include bribing, intimidating, or  
23 otherwise unlawfully communicating with a witness which  
24 persuaded us that this disclosure is necessary. Against  
25 that backdrop, Judge, I will relate pertinent facts.

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1           On Monday of this week, April 23, plaintiff's  
2   counsel sent us an email, and the email included a number of  
3   attachments that included both emails and documents which we  
4   were previously unaware of. The documents were obtained by  
5   plaintiff's counsel as a result of their service of a  
6   subpoena upon the Indiana hospital where Ms. Fallon works.  
7   The emails contain communication between Mr. Schneider and  
8   Ms. Fallon during the period October and November 2011.  
9   During that time Ms. Fallon was a defendant in Biles v.  
10   Fallon, but Biles v. Schneider had not yet been filed and  
11   served.

12           In general, the emails concern Ms. Fallon's answers  
13   to interrogatories and the testimony that she would be  
14   giving in an upcoming scheduled deposition. There is  
15   considerable communication from Dr. Schneider where -- and  
16   it's to Ms. Fallon -- where Dr. Schneider quite apparently  
17   is instructing Ms. Fallon on what to say, what not to say,  
18   and how to say it, both in her deposition and in her  
19   interrogatories. There is also a document that quite  
20   apparently appears to be -- and it's provided from him to  
21   her -- that appears to be his proposed text of her  
22   interrogatory answers.

23           While all of that is a really, really, really bad  
24   idea, I don't know if that conduct in and of itself would  
25   necessarily motivate this disclosure. However, the emails

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1 also contain communication in which Dr. Schneider provides  
2 Ms. Fallon with a doctor's note for signature by her  
3 personal physician. And the purpose of the note, it is  
4 stated in their communication, is to prevent Ms. Fallon from  
5 having to give her deposition in the litigation.

6 Then, Your Honor, when Ms. Fallon relates in an  
7 email to Dr. Schneider that she has secured her doctor's  
8 commitment to sign the doctor's note, thus hopefully in  
9 their mind precluding the deposition, Dr. Schneider writes  
10 in a responding email, "That should be a 250K-plus payoff  
11 for your future. Thank you."

12 Your Honor, after careful consideration of all of  
13 this information, in consideration of Rule 3.3(b) and the  
14 comments, we determined it was our duty to bring these  
15 matters to the attention of the Court. The rules go no  
16 further than dictating a duty of candor, in this case  
17 disclosure. The rules don't say what the tribunal should  
18 do, if anything, with the information that is disclosed.  
19 The plaintiff will have the ability to take whatever steps  
20 they desire.

21 The rules and the comments do discuss the issue of  
22 withdrawal of counsel following a lawyer's compliance with  
23 the duty of candor. I'm alerting the Court at this time  
24 that we will be filing a motion to withdraw as counsel for  
25 Mr. and Mrs. Schneider, accordingly, and we will do so

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1 promptly.

2 For now, Judge, that's the disclosure that we make.

3 If the Court has questions, I'll do my best to answer them.

4 Thank you.

5 THE COURT: What discussions have occurred to  
6 protect the Schneiders until they can secure replacement  
7 counsel in terms of a stay? What have the discussions, if  
8 any, been?

9 MR. BONNER: We have not had that discussion  
10 specifically with plaintiff's counsel. I can tell you that  
11 due to some ongoing settlement negotiations, there has not  
12 been a filing with respect to any of the information that we  
13 have been talking about today. There is no agreement in  
14 place that that information will not be filed, but it has  
15 not been filed as of this time.

16 I can tell the Court that it would be our hope that  
17 there be a period of time permitted for the Schneiders to be  
18 able to obtain separate counsel when we withdraw.

19 THE COURT: Do you know -- well, without seeking  
20 improper disclosures, I'd like to gain a better sense about  
21 when the Fallons (sic) were advised of your withdrawal.  
22 Have they signed documents acknowledging that? Do you know  
23 what efforts, if any, they've taken to secure replacement  
24 counsel?

25 MR. BONNER: Judge, the first time that we provided



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1 information to plaintiff's counsel of our intent to withdraw  
2 was at the same time we provided them with a copy of the  
3 letter that we sent to you yesterday morning. So they've  
4 known that for less than 24 hours.

5 THE COURT: Yeah, I -- go ahead.

6 MR. BONNER: I can tell you that the Schneiders are  
7 actively seeking other counsel. There is some consideration  
8 that under one of his insurance entities, that one of his  
9 insurers may come in to defend him and provide a duty of  
10 defense under a reservation of rights. That is something  
11 that I think may be able to occur in the near term.

12 THE COURT: All right. On that point, not wanting  
13 to catch you, Mr. Fleck, or Kristeen by flat foot, what sort  
14 of stay would you be able to absorb or accept in terms of  
15 the pursuit of this case?

16 MR. FLECK: Your Honor, good morning. It's Dan.  
17 You know, I mean, we've been down the road with this case  
18 quite a ways, Counsel, and of course the Court as well. And  
19 so I don't know that I can -- that I'm capable of being  
20 caught flat-footed anymore or, in the alternative, that I'm  
21 capable of being caught in any way other than flat-footed  
22 with what we're finding out.

23 I want to avoid 100 percent any kind of thought of  
24 throwing counsel under the bus here, be it Brad, be it  
25 Laurence or be it Mr. Silva. I don't want to do that.

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1 We're Wyoming lawyers, and this is something that I don't  
2 think that our bar imagines can happen. But -- and there's  
3 always a but when you say something like that -- but I need  
4 to correct the record a little bit and fill the record a  
5 little bit, Your Honor.

6           These emails also, also said that Ms. Fallon should  
7 send Dr. Schneider her digital device, including her cell  
8 phone and her hard drive, so that he could, quote/unquote,  
9 give them the microwave treatment. If you Google right now  
10 microwaving a hard drive, you will discover this is the way  
11 criminals destroy evidence on their computers. We also have  
12 a litany of innuendo about how he is going to make Dr. Biles  
13 pay for this with what I believe is the very lawsuit that  
14 you dismissed several weeks ago and flooding the record full  
15 of meaningless witnesses so that we, the plaintiffs, go on a  
16 wild goose chase, and by the time we figure out it's all a  
17 bunch of bull, that we will be so far down the road that  
18 nobody will know what happened.

19           So there is much, much more going on here than the  
20 litany of things that Brad Bonner properly disclosed. I  
21 have real questions, and I believe the Court should have  
22 real questions as well, as to what steps have been taken to  
23 get to this day.

24           We have been dealing with these laundry documents.  
25 And that's what this is, Your Honor, just so that you're not

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1 in the dark. We've given you the laundry documents. These  
2 are the eight pages of items which Dr. Schneider gave on to  
3 Ms. Fallon where he says that if she cooperates, we will  
4 turn her into, quote/unquote, a prison bitch, where he  
5 intimidates her repeatedly, where he instructs her to have  
6 Mr. Silva -- demands that Mr. Silva have her sign her  
7 interrogatories under oath, which is, by definition,  
8 subornation of perjury, where he threatens her that she will  
9 be left with nothing and where, Your Honor, he absolutely,  
10 positively bribes her. He says that if you take the bullet,  
11 you will be rewarded far in excess of any puny judgment that  
12 Dr. Biles could ever get against you.

13 Now, those documents were received in December by  
14 Bonner Stinson. They were presented to the court, I  
15 believe, through Judge Johnson. They were presented to the  
16 court through yourself, Judge Freudenthal, numerous times.  
17 So to be sitting here on April the 26th or the 27th,  
18 whatever -- the 26th and to be disclosing this is, to me, a  
19 day late and a dollar short.

20 And I mean that in both ways in a literal fashion.  
21 It's a day late because we, the plaintiffs, have wasted six  
22 months on this case. You, the Court, have wasted an  
23 extraordinary amount of time on this case with  
24 counterclaims, with counter-counterclaims, with discovery  
25 disputes, with being told -- me being told on the record

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1 that I somehow had fabricated and had made up this story  
2 about Dr. Schneider conspiring with Ms. Fallon. And people  
3 were outraged that we would make these kind of comments,  
4 when it was all right there in front of anybody who would  
5 reasonably look.

6 So, Your Honor, I'm befuddled and I'm perplexed. I  
7 hear for the first time today now we have insurance at  
8 issue. So you asked me an honest question that you weren't  
9 expecting this kind of a long answer about -- the question  
10 is, do we need a stay? The answer is, we're supposed to  
11 designate experts next -- very next week in the Fallon case.  
12 And so you think about what we've done here. And right at  
13 Thanksgiving in November of 2011, we send out a pretty  
14 simple subpoena which the Court probably could recite by  
15 heart. And what that says is, listen, we think that you  
16 folks conspired with this lady from Indiana, and what we'd  
17 like is we'd like all your emails, we'd like all your phone  
18 calls, we'd like all your text messages. And you know what  
19 else? We believe that you not only paid for her lawyer, but  
20 you bribed her.

21 Oh, Your Honor, I should mention as well that in  
22 that last set of discovery that they've been trickling out  
23 as a response to the subpoena we found two payments: One  
24 \$5,000 payment, I believe it was, a couple days before her  
25 deposition and a \$10,000 payment immediately after her

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1 deposition. That is called a bribe. And that is the  
2 consummation of a bribe that was promised in the previous  
3 laundry documents.

4           So we subpoenaed that, and all of a sudden we got  
5 into this huge foot-dragging exercise. We finally had to go  
6 to Judge Johnson. Judge Johnson heard it all, heard it all  
7 repeatedly, and said, you know what, I think you're going to  
8 get all of that stuff and I think you're going to produce  
9 all of those computers. So we went out and we spent about  
10 \$35,000 on computer experts. I don't think we found one  
11 single email, not one, but we did find that those computers  
12 had been accessed numerous times with Passport devices,  
13 which is the hard drive that was never produced to us.

14           And the two computers that we didn't get,  
15 Ms. Fallon says to us that one of them had orange juice  
16 spilled all over it. Our computer forensic expert found no  
17 evidence of any orange juice on it, but he also found no  
18 evidence of communication, even though she told us that  
19 there were over a hundred emails on that computer that dealt  
20 with her and John Schneider. John Schneider tells us, oh,  
21 every single email that I did was on a computer that was  
22 just miraculously stolen in Billings from a Hummer.

23           This case is utterly and completely built on lies  
24 and deceit. It has been deceitful from the minute it  
25 started until the end. What they did to Jimmie Biles was

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1     atrocious and horrible. They used and manipulated this very  
2     court in what they decided to do and how they decided to  
3     abuse the process here.

4             And so I have gotten myself all befuddled and  
5     flustered here about this issue. But the fact is I don't  
6     know how long a stay we need because I've got a ball of  
7     twine here that I don't think I can ever unravel. I don't  
8     know what's true and what's not true anymore. And I think  
9     that we've got two rule books sitting here in front of us,  
10    Your Honor. We've got the rule book that deals with how  
11    Wyoming lawyers are supposed to act. And that is why we're  
12    here today. And then we've got a whole other rule book on  
13    the other side of the table, O'Connor's Federal Rules, and  
14    that rule book deals with how we are supposed to punish the  
15    litigants in this case for the way they've behaved. And I  
16    think that those are two distinctly different issues.

17            I think that after this ball of twine gets unwound  
18    about what to do about Mr. Stinson and Mr. Bonner and,  
19    eventually, Mr. Silva's predicament, I think we need to  
20    spend a lot of time in that other rule book trying to figure  
21    out how exactly to deal with this profound, profound act of  
22    bribery, abuse of process, tampering with witnesses. It  
23    goes to the very, very heart and soul of everything we  
24    believe in as lawyers and everything we believe in as the  
25    justice system, and these people have proverbially given it

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1 the middle finger. And I am just astounded by the whole  
2 thing.

3 So that is not an answer that helps in any way, but  
4 it allows me, I guess, to get a few things off my chest this  
5 morning, Your Honor.

6 THE COURT: All right. Craig, I'll turn to you  
7 for --

8 MR. SILVA: Thank you, Your Honor.

9 No doubt I join in the comments of Mr. Bonner. I  
10 believe that we're properly here before the Court under that  
11 ethical rule. And I would join in his sentiments and  
12 comments that he's made in regard to that. That timeline  
13 basically applies in regard to my client as well. Those  
14 things that Mr. Bonner has suggested are troubling in regard  
15 to the documentation that we have seen and reviewed.

16 And in regard to the withdrawal, at least at this  
17 point, Your Honor -- and my client is concerned. She  
18 doesn't use the word "withdrawal," that's a lawyer's word,  
19 but she's afraid I'm going to fire her. And maybe I should  
20 fire her. And ultimately we might -- I might ultimately  
21 have to move to withdraw. But because of where we're at in  
22 regard to a possible resolution in this case, at least at  
23 this point it's not my position to do that, to move to  
24 withdraw, although that might come. And she knows that that  
25 might be something that would come in the future.

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1           She has no money. She's of limited means. When  
2 Mr. Fleck indicates to the Court that her retainer is paid  
3 by Dr. Schneider, those documents have been provided in  
4 discovery, and that's the case. She does not have the means  
5 to really retain any further counsel.

6           My other concern for her is, as you look at these  
7 documents, I think both for Dr. Schneider and for my client,  
8 that there will be some indication on a go-forward discovery  
9 basis that my client would ultimately have to take the Fifth  
10 Amendment on many of these issues because they have placed  
11 themselves in a very difficult spot.

12           So that being the case, Your Honor, I think we're  
13 in the right spot and doing the right thing in regard to  
14 Rule 3.3. And as to the remedy, at least from my position  
15 at this point is we're not in a position of remedy yet. I  
16 agree with Dan that there is another rule book to be applied  
17 here, but that rule book needs to be applied when people  
18 file motions and go forward with some sort of law for  
19 application of that second rule book. Even if you look in  
20 the comments of Rule 3.3, some of the remedies discussed  
21 are, make the statement of the matter to the trier of fact,  
22 ordering a mistrial, or perhaps nothing.

23           And at least at this point where the parties are  
24 situated, I think that the right remedy is to do nothing,  
25 allow the lawyers to work through this, so long as the



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1 disclosures have been made to the court, allow the lawyers  
2 to work through this at some attempted resolution. Maybe  
3 that leads ultimately to withdrawal. It may ultimately lead  
4 to withdrawal for myself.

5 But even if you look under Rule 3.3 and its Comment  
6 16, it says, "Normally a lawyer's compliance with the duty  
7 of candor imposed by this rule does not require that the  
8 lawyer withdraw from the representation of a client whose  
9 interests will be or have been adversely affected by the  
10 lawyer's disclosure."

11 So until the relationship with me and my client  
12 reaches the point of where we can't seem to work together to  
13 try to find a way out of this, at least I'm not willing to  
14 take those steps to withdraw at this point, mostly because I  
15 think we're doing the right thing under the rule and the  
16 parties, I think, are moving toward some sort of resolution.

17 But in compliance with Rule 3.3, I think we're in  
18 the right place at the right time and disclosing the right  
19 thing to the Court, Your Honor.

20 THE COURT: All right. Thank you. Anything more?

21 MR. BONNER: Judge, this is Brad Bonner. May I,  
22 just for a moment?

23 THE COURT: Yes.

24 MR. BONNER: It's really important that I make a  
25 couple of comments in response to what Mr. Fleck said. He

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1 refers to them as the laundry documents that have been sort  
2 of known in the case and identified in the case for a period  
3 of months. What he did not tell you was that when those  
4 laundry documents were identified and as long as they've  
5 been in the case, there was nothing associated with them  
6 that said who authored them. And in fact, within the  
7 context -- or within the text of those documents  
8 Dr. Schneider is referred to in the third person.

9 What came this week was the email that they  
10 produced to us, which was an email from Dr. Schneider and  
11 Ms. Fallon whereby the laundry document, if you will, was an  
12 attachment. That was the first time that there was a direct  
13 link between Dr. Schneider and the document itself. We can  
14 all -- we could all surmise. But until then, we didn't have  
15 the proof that we have now.

16 The other element that I wanted to make mention to  
17 the Court, just so that everyone is on the same page, is  
18 that we learned two days ago, Tuesday, of the potential that  
19 one of Dr. Schneider's insurers may be willing to provide a  
20 defense. That is not something that has been known before  
21 now.

22 Thank you, Your Honor.

23 THE COURT: All right. Thank you. I appreciate  
24 counsel's bringing these matters to the Court's attention.  
25 Thank you, Mr. Bonner, for taking the initiative to write to

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1 the Court, schedule this call. Thank you to everybody for  
2 being available at a very early time to confer about this.

3 At this time my decision will be to stay the case  
4 until August 1st.

5 MR. BONNER: Judge, we didn't hear that.

6 THE COURT: I will stay the case until August 1st.  
7 There will be an order associated with that stay which  
8 identifies a date for providing a status report to the Court  
9 if we don't by then know the status of the case in terms of  
10 whether the case is ready to go forward and, if so, on what  
11 schedule.

12 I would, Mr. Silva, include in that order that any  
13 motion by you, your firm, to withdraw from your  
14 representation must be filed on or before June 15th. I  
15 don't want to get through a significant window of time when  
16 plaintiff sees nothing moving forward on this case, only to  
17 then face another withdrawal and further delay. So you'll  
18 need to make that decision on or before that date.

19 MR. SILVA: Thank you, Your Honor.

20 THE COURT: Certainly that doesn't preclude other  
21 issues that may arise for which withdrawal would either be  
22 permitted or granted, such as securing, you know, outside --  
23 this is one of those where I would consider a motion to  
24 withdraw without replacement counsel, under the same  
25 circumstances that we've been discussing today. So please

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1 don't understand that you're then stuck, no matter what,  
2 after that date. But after that date there will need to  
3 be -- we'll need to be proceeding under a different rule and  
4 there will need to be an explanation for why you're  
5 withdrawing later.

6 MR. SILVA: Yes, Your Honor.

7 THE COURT: And I will give notice to everyone at  
8 this point in time of my intent to release this transcript  
9 to the U.S. Attorney's Office for the District of Wyoming.  
10 You may file your thoughts or comments or responses or  
11 objections or -- this isn't exactly an order to show cause,  
12 but I feel like the matters just simply can't be shifted off  
13 of counsel's shoulders -- legitimately shifted off of  
14 counsel's shoulders under the rules that we've been  
15 discussing, only to land in the Court's lap with the  
16 corresponding obligations that I feel I have as an officer  
17 of the court.

18 So I -- that is not a threat, but I do believe we  
19 should set this on some timeline to allow counsel to  
20 consider that and advise the Court, if you so wish, as to  
21 why there is no obligation on the judiciary or,  
22 alternatively, why some other action should be taken.

23 MR. BONNER: Judge, this is Brad. Do I understand  
24 that you will provide us notice of a time frame when you  
25 intend to do that?

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1           THE COURT: Well, my notice is that -- well, at  
2   this time my -- May 7th is a Monday. It's the Monday after  
3   I return. I've got some judicial training back East. And  
4   so you should expect that my intent to act would be to  
5   deliver a transcript of this to the U.S. Attorney by Friday  
6   of that same week.

7           And again, I'm leaving this window of time open for  
8   you to provide advice or assistance to the Court on some  
9   other approach, a different time frame, or reasons why such  
10   action is either not required or would be improper or  
11   inappropriate.

12           I'm sorry. I guess the 7th -- would that be the  
13   12th, then? The 11th. May 11th.

14           Is there anything else that we should address while  
15   we're on the phone?

16           MR. FLECK: Your Honor, I have -- this is Dan, I'm  
17   sorry -- I have a litany of refill counts that I need to add  
18   to that complaint. And I would like permission of the Court  
19   to continue filing matters in this case while it's under  
20   stay, both on the motion to amend and also on the sanctions,  
21   not necessarily against the lawyers, but against the  
22   litigants for their conduct here.

23           I don't want to wait until August to do that,  
24   simply because these issues are fresh right now and they're  
25   ongoing. And also, as I alluded to, those exact acts by

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1 these parties have had a tremendous economic impact on the  
2 case that, quite frankly, I believe the Court should remedy,  
3 and I will ask the Court to remedy with proper briefing, and  
4 that sort of thing. And I don't mean to catch anybody else  
5 flat-footed here, but I'm certain that everybody understands  
6 that that is the next step.

7 And to wait until August on those issues I don't  
8 believe is necessarily fair to the plaintiff. But I realize  
9 what the Court's ruling is. I guess I want to clarify about  
10 the filings.

11 And Your Honor, that doesn't necessarily mean that  
12 there has to be a response. I would just like to be able to  
13 get our filings in.

14 THE COURT: Yes. I appreciate that. I just didn't  
15 know if Mr. Bonner or anyone else had any thoughts about  
16 that.

17 MR. FLECK: And by response, Your Honor, I meant  
18 from the defendants. It doesn't concern me that they would  
19 be allowed to have until August to respond to either our  
20 amended complaint or our motion. So I'm sorry, Your Honor,  
21 for interrupting.

22 THE COURT: All right.

23 MR. BONNER: Judge, this is Brad. It seems  
24 appropriate to me that if there is going to be new counsel  
25 in the case, new counsel ought to be able to be in the case

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1 to deal with these matters from the beginning when they  
2 occur. For that reason, it would seem appropriate that any  
3 filings occur after your stay is completed. It just seems  
4 that would keep the playing field level and fair for all  
5 parties.

6 MR. FLECK: Your Honor, in response to that -- this  
7 is Dan -- that is a wonderful argument that mediates  
8 actually allowing us to file our briefs. No lawyer who gets  
9 into this case is going to want to be faced with a bait and  
10 switch and to be hit the minute they get involved in the  
11 case with two significant motions that will likely change  
12 the complexity of the case and change the tone of the case  
13 from stem to stern.

14 So those motions should be allowed to be filed now  
15 so that when they are searching for replacement counsel,  
16 that counsel knows exactly and explicitly what he or she is  
17 getting themselves into.

18 THE COURT: Well, I'll permit plaintiff to proceed  
19 with plaintiff's filings. However, the time frame under the  
20 local rules for responses to those filings won't commence  
21 until August 1st or as otherwise ordered by the Court.

22 Any other matters?

23 MR. BONNER: No, Judge.

24 MR. SILVA: No, Judge.

25 THE COURT: All right. Thank you very much for

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1 bringing this to the Court's attention. Obviously, the stay  
2 won't affect the Court's expectation that a motion for  
3 withdrawal from one or more counsel may occur during the  
4 stay interim. And the Court will act on those motions  
5 consistent with the discussions we've had here.

6 MR. FLECK: Your Honor -- this is Dan -- I assume  
7 that our responses to those motions to withdraw should be  
8 filed --

9 THE COURT: Yes, they would be filed under the  
10 local rules. Those deadlines would remain in effect for  
11 you.

12 MR. FLECK: Thank you.

13 THE COURT: And if there are other matters that are  
14 confusing about whether it should trigger a response before  
15 August 1st, please call chambers and we'll set up another  
16 call.

17 MR. FLECK: Thank you, Your Honor.

18 MR. BONNER: Thank you, Judge.

19 THE COURT: All right. Thank you, gentlemen.  
20 Thank you, Kristeen.

21 MS. HAND: Thank you. Bye.

22 (Proceedings concluded at 8:18 a.m.,  
23 April 26, 2012.)

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C E R T I F I C A T E

I, LISA D. ANTHONY, Deputy Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 7th day of May, 2012.

/s/ Lisa D. Anthony

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LISA D. ANTHONY  
Registered Professional Reporter  
Certified Realtime Reporter